

Remarks

The claims have been amended to more clearly identify the invention over the prior art.

The invention relates to treatment of various inflammations and irritations of the nasal passageway.

It is respectfully submitted that the use of Dead Sea salts to treat nose bleeds (epitaxis) and for post surgical irrigation is unexpected. The treatment relates to nasal injury wherein blood is present or coagulated. The nose spray of the invention surprisingly stops any bleeding caused by the injury or surgery and removes any coagulated blood in the passageway.

Salt was previously used in early or pre-modern medicine, however, applicant has found that the combination of minerals which includes magnesium halide is therapeutic for wounds and would prevent infection.

With regard to rhinitis and sinusitis, the prior art EPO 937453A2 relates to nasal and sinus congestion and to sooth coughing irritations. The coughing irritations would be in the form of a mouthwash and not a nasal spray. The congestion is relieved simply because a saline solution or similar solution is used to remove the mucous. Applicant provides a buffer and purified Dead Sea salts to treat irritated or inflamed membranes.

The Examiner has noted that the prior art does not utilize a buffer for the conditions recited in the present claims.

Bronchitis is primarily a pulmonary problem and cannot be extrapolated to provide a solution to treating nasal passageways. Congestion as taught by Gennaro is

likely to be caused by bronchitis which involves the nasopharynx that is treated with antibiotics to relieve the congestion which extends to the nasal passageway.

One skilled in the art would not extrapolate treatment of bronchitis to treatment of nasal passageways as taught by applicant.

The references cited by the Examiner cannot constitute an anticipation under 35 USC 102. In order to constitute an anticipation of the prior patent or publication must bear within its four corners adequate directions for practice of the present invention. (See Kalman v Kimberly-Clark Corp. 218 USPQ 781, 789 (Fed. Cir. 1983).

The difference of the present invention over the prior art is seen in the preamble.

Applicant's position that the preamble should also be considered in considering whether or not the invention is obvious is well supported by the legal authorities; in In re Szajan and Lump, 164, USPQ 632, (CCPA 1970), the Court in reversing the Board of Appeals held the claims in issue to be patentable over the prior art (a 35 USC 103 rejection) because as the Court stated in the "preamble of claims is more than a statement of intended use."

The Court continued at page 636 as follows in response to the solicitor's argument that preambles should be denied the effect of a limitation.

"We are, however, inclined to agree with appellants under the circumstances here. The preamble appears to be more than a mere statement of intended use since it gives "life and meaning" to recitations in the body of the claims referring to "configured complementary to the desired molded surfaces" and "adhesives...for securing the insert within a mold."

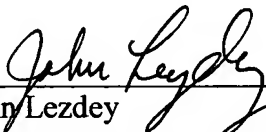
Considering the introductory language as providing the setting or background for the words that follow,...” (emphasis applied, at p. 636).

The Court went on to point out that the prior art failed to suggest what was stated in the preamble.

The Examiner has failed to demonstrate that the whole invention of the applicant was disclosed either alone or in any combination of the teachings of record. It is this lack of teaching which disproves the allegations of obviousness under 35 USC § 103 and thus supports patentability of the present invention.

Reconsideration and favorable action in view of the foregoing is earnestly solicited.

Respectfully submitted,



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